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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09 609,016	06 30 2000	Franco X. Milani	3248	2127

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17
EXAMINER

WEINSTEIN, STEVEN L

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 08/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. _____

Applicant(s) _____

Examiner _____

Group Art Unit _____

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE
OF THIS COMMUNICATION.

MONTH(S) FROM THE MAILING DATE

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- ☐ Responsive to communication(s) filed on _____
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☐ Claim(s) _____ is/are pending in the application.
- ☐ Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☐ Claim(s) _____ is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some* ☐ None of the:
 - ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____
 - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892 ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948 ☐ Other _____

Office Action Summary

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-6, 34, 7-10, 33, 11-13, 30, 31, 18-21, 23, 69, 22, 24-29, 32, 36, 37, 66-68, 71, 75-77, 14, 16, 17, 72-74, 38, 40, 43, 70, 78, 60, 63, 64 and 79 i.e., all of the claims 1-14, 16-34, 36-38, 40, 43, 60, 63, 64 and 66-79 are rejected under 35 USC 112, first paragraph. The amendment attempts to further clarify the nature of the composite food portion by reciting that the food items comprise gels. As disclosed, it would appear that only one of the food items comprises gels or is gelled. The other food item in the composite does not appear to comprise a gel or is gelled. For example, applicants' main composite product is peanut butter and jelly. Can peanut butter be regarded as a gel? Clarification and/or correction is requested. It is also noted that in applicants' last amendment, all the claims were amended to clarify that the composite included a food item containing a gel, but applicants have neglected to amend claim 60 in this regard.

Applicant's response filed April 11, 2003; Paper No. 18 also urged (in response to a query in the Office action mailed March 17, 2003, Paper No. 15) that the definition at the bottom of page 7 of the specification makes it clear what the phrase "different food items" means. However, the reference in the specification does not appear to rule out, for example, two ice creams that only differ in color or flavor. They would have a different look or taste, but they would still be ice cream. Would they really be different food items?

In Paper No. 18, received April 11, 2003, it is urged that Brna does not indicate how other products such as processed cheese may be combined in composite slices. However, it is not clear if applicants are claiming what allows the different food products to be combined with mixing or whether applicants are claiming only a result. The examiner has carefully reviewed the entire specification and has found the specification to be confusing in this regard. The specification appears to disclose a number of factors, which would effect mixing of two different food components including viscosity, apparently certain physical manipulations and certain additives added or interacting at certain times of the process, which tend to prevent the components from mixing. The specification does not seem to disclose which of these variables is necessary (i.e., critical) for the process to wrap the two components in a continuous VFF seal machine without mixing of the two different components (which normally would mix). For example, the specification in regard to the disclosure on page 10 of the specification refers to the findings as "key steps" in producing an acceptable, co-extruded product suitable for high speed, continuous commercial applications. This appears to be a statement of criticality. Will the co-extruded, two different component foods become packaged acceptably (presumably with no mixing) in a high-speed continuous process without these key steps? If so, what is minimally necessary for high-speed continuous, non-mix wrapping of two different foods, one of which is jelled, and which normally would mix? It is disclosed e.g. that level and speed control devices are provided to

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enable continuous production of multiple food items and indeed claim 1 recites combining food items using a portion control method. However, there does not appear to be any indication that either this portion control member prevents mixing or that even if it does, mixing can be sufficiently prevented by using a portion control member to allow the packaged product to remain unmixed. That is, do the structural concepts disclosed and claimed prevent mixing of the components?, do they prevent mixing of the components as they are being wrapped? And if so, what affect do they have on preventing mixing of the products once wrapped?

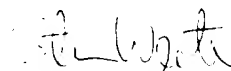
No art is applied against the claims.

Any inquiry concerning this communication from the examiner should be directed to Steven Weinstein whose telephone number is (703) 308-0650. The examiner can generally be reached on Monday-Friday from 7:00 a.m. to 3:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703) 308-3959. The fax phone numbers for the organization where this application is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is (703) 308-0661.

S. Weinstein/dh
July 10, 2003


STEVE WEINSTEIN
PRIMARY EXAMINER 176
8/1/03